

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 316 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
 2. To be referred to the Reporter or not? Yes
 3. Whether Their Lordships wish to see the fair copy of the judgement? No
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
 5. Whether it is to be circulated to the Civil Judge?

No

NATVERALAL A JANI

Versus

N N JAIN

Appearance:

MR SM SHUKLA for Petitioner
MR ASHOK K PADIA for Respondent No. 1
Mr.S.T.Mehta, Ld.APP for Respondent No. 2

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 03/09/97

ORAL JUDGEMENT

Rule. Mr.Padia waives service. It is very surprising that the Court of the Metropolitan Magistrate as well as City Sessions Court both have been carried away by the argument advanced on behalf of the original accused that in view of the amendment in Sec.113 of the

Companies Act, 1956 (for short "the Act), punishment can be done to the defaulting respondent under Sec.113(2) by the Company Law Board (for short "the Board"). When the argument was based on this, taking it to be a question of jurisdiction, the Court of Metropolitan Magistrate, Ahmedabad, accepted the plea that it has no jurisdiction.

2. The matter was carried before the learned City Sessions Judge, where also this plea was found acceptable. It is, indeed, surprising that this plea has been advanced, much more so, which should have been accepted. Civil liability or responsibility arising out of a civil nature under a statute is one thing and penalty imposed by that very statute necessarily has to be treated under Criminal Procedure Code read with relevant provisions of the Statute which makes that particular act of offence. Once it is an offence, obviously, no civil Court can exercise its jurisdiction and the punishment has to be awarded by a competent Court established under the Code of Criminal Procedure. It is not to say that the Statute, creating an offence may not provide for a forum duly empowered to deal with penal provisions. In the instant case, as one reads the amendment introduced in the year 1986 in the Companies Act in place of what is ordinarily understood to be "Court" namely a Civil Court, which until amendment was a District Court and in some of the cases even the High Court, the Board came to be introduced, for which one may read the definition given in Sec.2 Sub-Sec.10 (A) of the Companies Act, 1956. It refers to a Board constituted under Sec.10(E). The Board having been constituted under Sub-Sec.10(E), clause 4(c) thereof provides for the powers of the Bench of a Board which are that of a Civil Court and after making reference to the Civil Procedure Code, certain matters are enumerated. If at all, no indication as to the nature of the function of the Board was required, these provisions in the Act itself make it abundantly clear that it is nothing else but a substitution of a Civil Court.

3. Civil Court, ordinarily, is to be understood with reference to the Civil Procedure Code and whenever there is a reference to a principal Court of original jurisdiction, it would be a District Court and that was originally known in the Act and very rarely High Court came into picture as the Court of first instance.

4. In the year 1988 there came to be brought amendments, one of which was to constitute a Company Law Board and assign it the function that was given to the

Civil Court prior to the amendment.

5. In this background, if we turn to sub-Sec.2 of Sec. 113 of the Companies Act, it is quite clear that the default envisaged in that Section pertaining to non-issuance of certificate entails criminal liability in form of a punishment which may extent to Rs.500/- for every day during which the default continues and it being a fine to be imposed by way of punishment, obviously, it is within the province of a magisterial Court exercising criminal jurisdiction in the area.

6. Learned Advocate Mr.Padia drew my attention to sub-Sec.3 of Sec.113 where the Company Law Board has been given power to issue directions for giving certificates. This is nothing else, but the power originally exercised by a Civil Court i.e. the District Court in the nature of passing a decree for specific performance and therefore, it cannot be read to mean that for exercising penal jurisdiction also, the Board has power.

7. The Scheme of things that have changed is only with regard to substitution of the Court by Company Law Board in relation to certain civil matters, but so far as the complaints are concerned, or dealing with the default as prescribed under the Companies Act, 1956 are concerned, it was and it continues to remain within the provisions of Criminal Courts established under the Criminal Procedure Code, 1973 and therefore, the argument that only the Board can exercise jurisdiction and therefore, the complaint filed before the Court of Metropolitan Magistrate, has no jurisdiction, is totally baseless.

8. In the result, the petition is required to be allowed. It is accordingly allowed. The orders of the Courts below are set aside. Rule is made absolute.
